

Serial No.: 10/508,898
Case No.: 21070YP
Page No.: 14

REMARKS

The Office Action dated June 28, 2007, has been carefully considered. The Applicants respectfully request reconsideration of the application in view of the foregoing amendments and the following remarks.

Claim 24 has been amended. Claims 2-7, 9, 12, 13, 15, 16, 18-21, 24, and 42 remain pending in the application following the above amendments.

Claim 24 is rejected under 35 USC §112, second paragraph, as being indefinite.

Claim 24 has been amended to remove the objected-to term "controlling." In light of this amendment, the Applicants respectfully request withdrawal of the section 112, second paragraph, rejection.

Claims 2-7, 9, 12, 13, 15, 16, 18-21, 24, and 42 are rejected under 35 U.S.C. 102(e)/103(a) as being unpatentable over Edmondson, et al., US 6,699,871; over Edmondson, et al., US 7,125,873; and over Edmondson, et al., US 2006/0270679.

US 6,699,871; US 7,125,873; and US 2006/0270679 are only available as prior art under 35 U.S.C. 102(e). The applied references are disqualified under 35 U.S.C 103(c) because the present application (SN 10/508,898) and the three cited references were, at the time the invention of the present application was made, owned by Merck & Co., Inc. Therefore, the Applicants respectfully request withdrawal of the section 103(a) rejection.

Claims 2-7, 9, 12, 13, 15, 16, 18-21, 24, and 42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 2, 4-15, 18, and 23 of US Patent No. 6,699,871.

The Applicants concurrently submit a Terminal Disclaimer under 37 CFR 1.321(b) to obviate the obviousness-type patenting rejection. The Applicants therein have disclaimed the terminal part of any patent issuing from the present application which would extend beyond the expiration date of the full statutory term of U.S. Patent No. 6,699,871. The terminal disclaimer fully complies with 37 CFR 3.73(b). Accordingly, the double patenting rejection should be withdrawn.

Claims 21 and 24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-8 of US Patent No. 7,125,873.

The Applicants concurrently submit a Terminal Disclaimer under 37 CFR 1.321(b) to obviate the obviousness-type patenting rejection. The Applicants therein have disclaimed the terminal part of any patent issuing from the present application which would extend beyond the expiration date of the full statutory term of U.S. Patent No. 7,125,873 . The terminal disclaimer fully complies with 37 CFR 3.73(b). Accordingly, the double patenting rejection should be withdrawn.

Claims 2-5, 9, 12, 13, 15, 18-21, 24, and 42 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-6, 11-14, 17-23, and 26 of copending Application No. 10/540,283 (US2006/0052382).

The Applicants concurrently submit a Terminal Disclaimer under 37 CFR 1.321(b) to obviate the obviousness-type patenting rejection. The Applicants therein have disclaimed the terminal part of any patent issuing from the present application which would extend beyond the expiration date of the full statutory term of copending Application No. 10/540,283 (US2006/0052382). The terminal disclaimer fully complies with 37 CFR 3.73(b).

Serial No.: 10/508,898
Case No.: 21070YP
Page No.: 16

Accordingly, the double patenting rejection should be withdrawn. The Applicants believe that all of the objections have been overcome by amendment, and they therefore earnestly solicit an early Notice of Allowance.

Respectfully submitted,

By 

Philippe L. Durette

Reg. No. 35,125

Attorney for Applicants

Merck & Co., Inc.

P.O. Box 2000

Rahway, NJ 07065-0907

(732) 594-4568

Date: August 10, 2007

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on the date appearing below.

MERCK & CO., INC.

By Pamela Sealding Date 8-10-07